

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2012 APR 24 A 10:24

CARTER FULLERTON & HAYES, LCC

a Virginia limited liability company

4115 Annandale Road

Suite 205

Annandale, Virginia, 22003

(703) 658-7737

Plaintiff,

v.

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, NW

Washington, D.C. 20580

(202) 326-2222

Defendant.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

CA No. 1:12cv448
LOG/IDD

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") for injunctive and other appropriate relief and seeking disclosure and release of agency records improperly withheld from plaintiff by defendant Federal Trade Commission.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552 (a) (4) (B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552 (a) (4) (B).

3. Plaintiff is a Virginia law firm that filed a FOIA request on behalf of a not-for-profit organization.

4. The Federal Trade Commission ("FTC") is an independent administrative agency of the government of the United States. FTC is an agency within the meaning of 5 U.S.C. § 552 (e).

**PLAINTIFF'S FOIA REQUEST AND DEFENDANT'S FAILURE
TO DISCLOSE OR MEET THE REQUIREMENTS OF THE ACT**

5. On May 24, 2011, the plaintiff filed by electronic mail and US mail postage prepaid its FOIA request which is attached to this Complaint as **Exhibit A** and incorporated herein by reference.

6. On May 24 and May 26, 2011, the defendant agency acknowledged receipt of the FIOA request by letters to the plaintiff which are attached as **Exhibits B and C**.

7. The FTC failed to respond to the request within the time period required by the Act.

8. During the following four months, the defendant would partially respond to the request **Exhibits D, E, F, G, and H** but only after repeated telephone calls by the plaintiff to the defendant.

9. The defendant failed to disclose any materials or make any determinations regarding the request within the time period provided by FOIA. 5 U.S.C. 522 (a)(6)(A)(ii).

10. The defendant made no attempt to address the plaintiff's concerns regarding the delay and nature of the defendant's FOIA response despite requests to FTC attorneys.

11. Of two thousand four hundred and seventy one (2471) responsive documents, defendant withheld portions of, or entire documents in, one thousand seven hundred and twenty (1720) cases for a disclosure rate of less than thirty one percent (31%).

12. Approximately **seven (7) out of every ten (10) responsive documents were partially or totally withheld** by defendant on a subject as benign as the FTC's engagement in alcohol regulation.

13. Plaintiff appealed the defendant's refusal to disclose the requested documents to the Chief FOIA Officer of the FTC. **Exhibit I.**

14. The defendant denied the plaintiff's appeal out-of-hand and without any further disclosure. **Exhibit J.**

15. As a result of the defendant's actions and the defendant's complete failure to comply with the letter or the spirit of the FOIA requirements, the plaintiff has filed this Complaint.

CAUSE OF ACTION

16. Plaintiff re-alleges the allegations contained in ¶¶ 1-15.

17. Defendant has wrongfully withheld the requested documents from the plaintiff.

18. Plaintiff has exhausted applicable administrative remedies with respects to its FOIA request.

19. Plaintiff is entitled to injunctive relief.

REQUESTED RELIEF

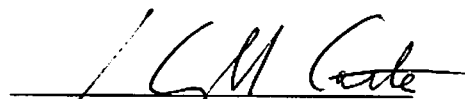
WHEREFORE, plaintiff respectfully prays that this Court:

- a. enter an order finding the FTC's actions in violation of the Freedom of Information Act;
- b. enter an order enjoining the FTC from violating the Freedom of Information Act;
- c. enter an order requiring the defendant to disclose, in their entirety, the requested records by making copies of those records available to the plaintiff forthwith;
- c. provide for an expeditious proceeding in this action;
- d. direct the FTC to account to the Court for its actions per 5 USC § 552 *et seq.*, and in doings so require the FTC to provide its reasons for not responding to the plaintiff's FOIA request;
- e. order the defendant to adopt new practices for responding to all future FOIA requests;

- f. award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- g. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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